

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**AIMBRIDGE EMPLOYEE SERVICE CORP.,
D/B/A ALOFT CHICAGO O'HARE**

Employer

and

Case 13-RC-21849

UNITE HERE Local 450

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

The primary issue raised in this case is whether the petitioned-for unit is an appropriate unit under Section 9(b) of the Act. The Petitioner, UNITE HERE, Local 450 (herein Local 450 or the Union), seeks to represent a unit of housekeeping and laundry employees employed by Aimbridge Employee Service Corp. d/b/a Aloft Chicago O'Hare (herein Aloft or the Employer). Local 450 asserts that the unit petitioned for, consisting of Aloft's employees in its "re:fresh" department, including the room attendants, laundry attendants, house attendants, and overnight house attendants, is an appropriate unit. There are approximately 24 employees in the unit sought by the Petitioner. The Employer contends that the petitioned-for unit of employees is inappropriate because the housekeeping and laundry employees lack a distinct community of interest without the front desk, van drivers, food and beverage, and maintenance employees. As such, the Employer asserts that the only appropriate unit should include all of the aforementioned

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

employees. There are approximately 51 employees in the unit the Employer contends is appropriate.

The second issue raised in this case is whether the housekeeping supervisors—positions currently held by Peggy Camp and Dalia Frausto—are supervisors under Section 2(11) of the Act, as the Petitioner asserts, and should therefore be excluded from any unit found appropriate.

II. Decision

Based on the entire record² in this proceeding and for the reasons set forth below, I find that the housekeeping and laundry employees have a separate identity of functions, skills, and supervision, and that the petitioned-for unit is therefore an appropriate unit under Section 9(b) of the Act. I also find that the housekeeping supervisors are not supervisors as defined by Section 2(11) of the Act, and that they are eligible for inclusion in the unit determined to be appropriate.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendants, and housekeeping supervisors employed by the Employer at the Employer's facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 26 employees for whom no history of collective bargaining exists.

III. Statement of Facts

The Employer is a hotel located in Rosemont, Illinois, near the Chicago O'Hare Airport and managed by Aimbridge Hospitality. Open since July 2008, the Employer is a 251 room hotel that offers a "hip, chic and intimate environment" that caters to hip, young business and transient travelers. Aloft is a limited service hotel as it does not have a full-service restaurant on its premises. Instead, it has a snack bar called "re:fuel" where guests may purchase frozen or pre-made food items that are assembled or heated in a prep area. In addition to re:fuel, guests can enjoy "wxyz" (hotel bar) where they can get a cocktail and then sit in the adjoining seating area or the lobby area referred to as "re:mix or "re:lax". Aloft's other guest amenities include "splash" (pool), "backyard" (outdoor seating area), "re:charge" (fitness center), and "tactic" (meeting rooms). The Employer prides itself on its unique branding, including the use of its unique "aloft lingo" that includes the hotel's signature greeting, "aloha," its signature scent

² The Employer submitted to a Motion to Amend the Reporter's Transcripts on July 17, 2009. The Regional Director has reviewed the proposed changes and have taken them into consideration in issuing this Decision and Direction of Election.

“vibrance” which is sprayed out of scent machines in the lobby and re:mix areas, and adhering to its core values: sassy, savvy and space.

The “back of the house” area of the hotel is an area that is open only to employees. The employees’ break room “chill” is located in the back of the house and the employees’ time clock is located inside chill. All hotel employees use chill, either before or after their shifts, or during their breaks and lunch to eat, socialize, watch television, or use the internet. There is also an employee bulletin board in this area on which employee birthdays, comment cards, pictures, job postings, and any other relevant announcements and upcoming events at the hotel are posted. The hotel’s laundry area, referred to as “clean” is also located in the back of the house, making it easily accessible for bartenders to access clean rags and towels to use in the bar area as well as return the dirty ones to be cleaned. Bartenders do not have to check with anyone before getting clean towels or dropping off dirty ones. Also located in the back of the house is the assistant general manager’s office, the housekeeping manager’s office, and storage and supply rooms.

The Employer occasionally has events referred to as “all hands on deck” events, which require some participation by most of its employees. Such events may be banquet event orders, which are sold and organized by the Employer’s sales department and then implemented by the necessary departments. Since Aloft is located close to Chicago O’Hare Airport, the Employer has agreements with airlines in cases of emergency where a large number of airline passengers need overnight accommodations. During these distressed passenger situations, the hotel may have to scramble to get a sufficient number of guest rooms available to incoming airline passengers. To that end, it might be necessary to have as many available employees assist in preparing the hotel and guest rooms for the passengers’ arrival. The frequency of distressed passenger events are unpredictable and although these events could happen as often as once or twice a week, there are also weeks when such events do not occur at all.

A. Wages and Compensation

Of the hourly employees who are at issue in the instant case, the housekeeping and laundry employees’ wages are the lowest, ranging from \$9.00 per hour to \$11.00 per hour. Ricardo Martinez, who has worked as the overnight house attendant since the hotel opened last year, earns \$10.50 per hour, and occasionally gets a dollar or so in tips from the guests he drives to and from the airport during his overnight shift. Regular van drivers’ wages start at \$9.25 per hour plus tips from the guests. Food and beverage employees, which include the re:fuel attendant, cocktail servers, and bartenders, earn in the range of \$8.75 per hour to \$12.00 per hour plus tips. Front desk employees earn between \$12.00 per hour to \$13.00 per hour. The Employer’s engineers are paid the highest wages, earning between \$16.00 per hour and \$18.00 hour. There is no evidence that employees who occasionally cross-over to assist in departments other than their own are paid any less or more for the time that they are performing work outside of their regular duties.

All full-time employees are eligible for the Employer’s medical, dental, and vision plans, as well as a 50-percent discount on hotel rooms. The Employer holds quarterly meetings for all employees during which hotel’s service scores are

communicated, employees' birthdays and anniversaries are celebrated, and employees' accomplishments are recognized. The focus of these events is more of a celebratory event for the employees aside from the employees' annual holiday party and summer barbeque.

B. Hours of Work

Although the hotel operates 24 hours a day, seven days a week, the evidence presented at the hearing establishes that employees in different department have their own schedules that are made by the respective supervisors in each department. Erma Flores, the housekeeping manager, is responsible for creating the housekeeping and laundry employees' work schedules each week. The housekeeping department starts at 8:00 a.m. on weekdays and 9:00 a.m. on weekends, with employees working in eight hour shifts. Room attendants, whose primary responsibility is to clean guest rooms, typically work from 8:00 a.m. to 4:30 p.m., although some may start and end later. Laundry attendants also work from 8:00 a.m. to 4:30 p.m., although there was some testimony that they may start earlier on occasion. House attendants work eight hour shifts from 7:00 a.m. to 11:00 p.m. and the overnight house attendant works from 11:00 p.m. to 7:00 a.m.

The hours of work for the food and beverage employees vary depending on their position. The cocktail servers and the bartenders work from 4:00 p.m. to midnight, while the re:fuel attendant works from 5:00 a.m. to 2:00 p.m., or as needed. The front desk has coverage 24 hours each day, seven days a week, and has agents who work in eight-hour shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. The regular van drivers only work between 5:00 a.m. to midnight and the overnight shift—from midnight to 5:00 a.m.—is covered by the overnight house attendant. The engineers and maintenance employees work eight hour shifts from 7:00 a.m. to 11:00 p.m. and like the van drivers, there is no engineer on duty during the overnight hours. During the overnight hours, the overnight house attendant occasionally deals with minor maintenance issues, such as unclogging toilets, changing the television remotes, or replacing a damaged refrigerator from a guest room with a functional one.

C. Supervision

The general manager, Jeremy Schaeffer, and assistant general manager, Scott Gibson, are the only ones at Aloft who have the authority to hire new employees, discipline and discharge employees, adjust employee grievances, and approve employee work schedules, promotions and transfers, and leaves of absence. Each department—housekeeping, engineering/maintenance, food and beverage, front desk—has its own supervisor or manager who attends weekly management meetings, prepares schedules of employees in his/her department (which are submitted to Schaeffer or Gibson for approval), and can recommend employees for discipline. Gibson supervises the re:fuel attendant and is responsible for the re:fuel schedule. Department managers can only resolve minor scheduling conflicts once a work schedule has been approved by Gibson or Schaeffer.

The Employer has a "Manager on Duty" program, or "MOD" program, during which one of the hotel's nine managers work as the on-site manager on duty from 3:00 p.m. Friday until noon on Sunday. Each of the nine managers—housekeeping manager, chief engineer, Aloha

desk manager, general manager, assistant general manager, and four sales managers³—rotate throughout the year, such that each manager is “on duty” approximately five times during the year. Each MOD is ultimately responsible for all departments during his or her duty and prepares a report of the weekend at the end of his or her shift.

The Employer’s management team, made up of the individuals who do “MOD” duty, attend a management meeting every Thursday during which they discuss a number of issues, including budgets, customer service, hotel occupancy, upcoming events, and other concerns. The managers also nominate and vote on employee-of-the-month recognitions. Although there is some overlap of supervision, particularly during large or unexpected—or “all on deck”—events such as a New Year’s Eve Party, or a “distressed passenger event,” there is not substantial evidence that supervision across departments is a daily, or even regular, occurrence. For the majority of the time, employees are supervised and directed by their respective department’s manager or supervisor.

Housekeeping Department Supervision

Erma Flores currently works as the manager of housekeeping and Peggy Camp and Dalia Frausto work as housekeeping supervisors. Camp and Frausto inspect guest rooms to make sure that cleaning is done properly and fill out paperwork if the work has not been properly. To that extent, their work is similar to Flores. However, there are duties that only Flores has the authority to perform as the manager. Flores is responsible for making the work schedule for all of the housekeeping and laundry employees, which she, like all other departmental managers, submits to Gibson for approval. Camp and Frausto do not make work schedules. Although Flores can recommend the discipline of an employee within her department, she does not have the authority to independently discipline or discharge employees, but must seek the approval of Gibson or the hotel’s general manager. Once Gibson or the general manager approves the discipline of an employee, Flores then has the authority to sign the written warning and participate in a session with the disciplined employees. Camp and Frausto do not make the work schedules and have no authority to issue warnings or to discipline or recommend the discipline of housekeeping and laundry employees. Flores alone directs the work of the housekeeping and laundry employees, including the work of the overnight house attendant as it pertains to routine housekeeping responsibilities. None of these individuals—Flores, Camp or Frausto—have the authority to hire new employees because, as stated above, only Schaeffer and Gibson are responsible for making hiring decisions at the hotel.

D. Qualification and Training

The Employer contends that none of the positions at issue require any specific qualifications or skills, although certain positions are better filled with individuals who have certain skill sets. For example, Assistant Manager Gibson admitted that aside from the hotel’s and his desire to have its employees trained for a variety of positions, the fact remains that the Employer would prefer to have a bartender who knows how to mix drinks, an engineer who has some knowledge of using tools and a general maintenance background, a front desk person who

³ There is no dispute that these nine managers are supervisors under the Act and the parties so stipulated during the hearing.

can speak English and be able to easily communicate with guests and other people, and a driver who is licensed to drive. Although the Employer asserts that it is willing to train anyone who expresses the desire and willingness to work in a different position, the evidence shows that this is not common practice at the hotel and that permanent transfers of employees between different departments have been rare.

All employees who were hired prior to the hotel's opening received a three-day training, which included getting-to-know activities and getting the staff familiar with Aloft's lingo and atmosphere. A couple of months after the hotel opened, all employees were given sexual harassment training. Employees hired since the opening of the hotel are given an orientation session pursuant to a new-hire checklist, which includes having the new employees review the Aloft brand and its core values. All employees receive an employee handbook and are subject to the house rules and a 90-day introductory period.

E. Job Functions, Interchangeability, Contact among Employees

All employees at Aloft wear uniforms. Aside from a pink square lapel pin with the lower case letter "a" on it, which represents "Aloft" or "Aloha" and signifies that they are employees, the employees all wear different uniforms based on the department in which they work. For example, all housekeeping employees, such as the overnight house attendant, wear grayish colored pants and a striped shirt. Front desk employees wear khakis and polo shirts; van drivers wear jeans and polo shirts; bartenders also wear jeans and polo shirts; and engineers wear jeans and blue denim shirts. The uniforms are issued to employees by the Employer and the employees are responsible for cleaning and maintaining them. During the occasions when an employee in one department performs the work in another department, that employee does not change uniform, but instead, remains in his usual uniform. For example, when the overnight house attendant drives the shuttle van during the night shift, he remains in his housekeeping uniform and does not change into the van drivers' uniform. Similarly, when he is switching out remote controls in a guest room or unclogging a toilet, he does not change into the uniform generally worn by the engineers.

The front desk is generally responsible for coordinating the needs of individual guests who come and stay at the hotel. For example, the front desk notifies housekeeping if extra towels need to be taken to a guest room, or maintenance if there is a problem somewhere in the building that needs to be repaired, or van drivers when guests need to be driven to the airport. During the overnight hours, the overnight house attendant has routine cleaning jobs that he is primarily responsible for, such as the public bathrooms, the lobby, the swimming pool, and the gym, as well as responding to guest requests, driving the shuttle van, and other random requests. On some occasions, front desk employees have driven the shuttle vans. Although the Employer asserted that drivers also work the front desk and that housekeeping employees drive vans, the evidence showed that in practice, regular van drivers and house attendants who occasionally drive shuttle vans do not, in fact, actually perform duties typical of front desk, or Aloha desk, employees. The evidence also clearly established that the majority of the housekeeping and laundry employees do not and have never driven shuttle vans or performed front desk duties. Part of this is attributed to the fact that front desk employees must be fluent in English and the

majority of housekeeping and laundry employees are fluent in Spanish only and speak very little English.

Aside from the occasional and random “all hands on deck” events such as a distressed passenger event or a large social function (like a New Year’s Eve party), “transfers” between departments are merely temporary and not regular. Partly due to the fact that the hotel is relatively new and has only been operating for a year, there is no evidence of permanent transfers between departments or promotions within or outside of departments. Aside from several new hires, most employees work in the positions they were hired for at the time of the hotel’s opening last summer. Despite the functional interchange that the Employer asserts, the evidence shows that in practice, most employees spend anywhere between 90 percent to 100 percent of their scheduled work time performing only their primary tasks—for example, room attendants spend 99 percent of their time cleaning rooms, drivers drive vans for 90 percent of their work time, and engineers spend 90 percent of their time performing maintenance and repairs. There is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts.⁴ Despite the Employer’s broad assertions that front desk employees instruct housekeeping employees daily to drive the vans, the evidence establishes that only two housekeeping employees actually drive the shuttle vans (house attendants).

IV. Analysis

A. Appropriateness of Petitioned-for Unit

The Act does not require that the petitioned-for bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured “the fullest freedom in exercising the rights guaranteed by this Act.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950), *enf’d*. 190 F.2d 576 (7th Cir. 1951). Thus, it is well-settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Rohtstein Corp.*, 233 NLRB 545, 547 (1977). The Board will pass only on the appropriateness of units that have been argued for, and the burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). If, however, it is inappropriate, the Board will scrutinize the employer’s proposal. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). Thus, the unit requested by a petitioning union is the starting point for any unit determination.

The Board has reasonably broad discretion in determining what constitutes an appropriate bargaining unit. *Overnite Transportation*, 322 NLRB at 724. See also

⁴ The Employer asserted during the hearing that a laundry attendant recently expressed interest in driving vans and that the hotel was looking into accommodating this interest. However, that an employee has interest in performing a job outside of his own department does not necessarily establish that the two positions—laundry and driving vans—are functionally interchangeable.

Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). In defining the appropriate bargaining unit, the Board's focus is on whether the employees share a "community of interest." *Overnite Transportation*, 322 NLRB at 724. To that end, the Board considers the following community of interest factors: method of wages or compensation, hours of work, employment benefits, whether the employees have common supervision, the degree of dissimilar qualifications, training and skills, job functions, interchangeability and contact among employees, work sites, and other working terms and conditions. *Id.* See also *Kalamazoo Paper*, 136 NLRB at 137.

There is no question that the smooth operation of Aloft is dependent upon the cooperation and communication of all the employees who work at the hotel. However, the evidence does not reflect the close integration and functional interchange necessary to find the petitioned-for unit inappropriate. The Employer contends that the petitioned-for unit "simply cannot function independent of the front desk, van drivers, food and beverage, and maintenance employees." In the instant case, the evidence shows that the majority of the housekeeping and laundry employees have minimal contact with the other employees throughout the course of their work schedule. Although all employees use the same entrance into the hotel and the same break room, the issue of whether a group of employees shares a community of interest sufficient to justify representation separate from other employees must be determined more by evaluating their actual work functions rather than where they spend their brief break periods or the door through which they arrive at work. The evidence clearly shows that housekeeping and laundry employees, including the house attendants, on balance, share a community of interest with each other far beyond the incidental interchange that they share with the other employees at the hotel.

Although the overnight house attendant may have more than minimal contact with other employees due to the fact that his responsibilities include driving the shuttle and tending to minor maintenance issues in the absence of regular van drivers and the engineering department during the overnight hours, the weight of the evidence suggests that the house attendant shares a community of interest with the housekeeping and laundry employees in all other aspects of his work. Furthermore, aside from the briefest of testimony by Martinez that "somebody quit housekeeping and went to...driving the car [shuttle]" there is no evidence that there has been any permanent transfers in or out of the housekeeping department.

In *Holiday Inn-Troy*, 238 NLRB 1369 (1978), the Board held that the petitioned-for unit of housekeeping employees constituted a distinct department, performed manual tasks under separate supervision, and had minimal contact and interchange with other hotel employees, including front office and restaurant employees, such that a unit of housekeeping department employees constituted an appropriate unit. Although the Board in *Holiday Inn* acknowledged that there was evidence supporting the view that a facility-wide unit was appropriate, the Board ultimately determined that the housekeeping department employees have a separate and distinct community of interest which entitles them to representation apart from the other employees employed at the hotel. See also *Ramada Inns, Inc.*, 221 NLRB 689, 690 (1975) ("The Board has long since abandoned the view that only a hotelwide or motelwide unit is appropriate. Rather, the Board considers each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees and only if functions and mutual interest are highly integrated is an overall unit alone appropriate.").

Although the Employer asserts that managers for various departments, such as the director of sales, routinely directs the work of employees outside of the sales department, the evidence only shows that this is something that “she could, she may, she doesn’t always but may do.” Despite the Employer sweeping assertions about the interchangeability of job functions across the various departments, the evidence shows—and Gibson admitted—that the practical reality of the Employer’s situation is that most, if not all, of the employees in the individual departments spend 90 to 100 percent of their work time performing their primary tasks. For example, room attendants spend 99% of their time cleaning rooms, van drivers drive vans for 90% of their work time, and engineers spend 90% of their time performing maintenance and repairs. Even the house attendants who spend part of their shift driving the vans, setting up meeting rooms, or performing minor maintenance duties, still spend significantly more than half of their time—about 60 to 70 percent—performing housekeeping work.

In *Ramada Inn West*, 225 NLRB 1279, 1280 (1976), the Board held that the petitioned-for unit of housekeeping and maintenance employees was an appropriate unit due to the lack of highly integrated job functions and mutuality of interests between the petitioned-for unit and the other hotel employees as to require their combination into a single unit. The record in the instant case clearly shows that almost all of the employees in the petitioned-for unit are separately supervised by Housekeeping Manager Flores, do not interchange with other employees on a regular basis, and for almost their entire work hours are engaged in the performance of distinctive manual functions in furtherance of the objectives and responsibilities of their respective departments. In the instant case, the evidence shows that the housekeeping and laundry department employees have a distinct and separate community of interest apart from the other hotel employees to justify separate representation. Although the housekeeping and laundry employees share some broad interests with the rest of the Employer’s employees in promoting the hotel’s operational philosophies, the weight of the evidence clearly establishes that the petitioned-for unit is an appropriate unit.

Based on the evidence presented by the parties, I find that the petitioned-for unit of housekeeping and laundry employees is an appropriate unit under Section 9(b) of the Act. Although a larger unit *may* also be appropriate, the Board only requires that a requested unit be *an* appropriate unit to proceed to an election for representation.

B. Supervisory Status of Housekeeping Supervisors

In the instant case, the Petitioner asserts that the housekeeping supervisors are supervisors under Section 2(11) of the Act and should not be included in any unit found to be appropriate. Section 2(11) of the Act defines “supervisor” as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection

with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Pursuant to this definition, individuals are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., “assign” and “responsibly to direct”) listed in Section 2(11); (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and (3) their authority is held “in the interest of the employer.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006), citing *Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The burden to prove supervisory authority is on the party asserting it. *Oakwood Healthcare*, 348 NLRB at 687. See also *Kentucky River*, 532 U.S. at 711-12.

Based on the record, I find that the housekeeping supervisors are not 2(11) supervisors and should be included in a unit of housekeeping and laundry employees. As the facts discussed in detail above show, the housekeeping supervisors, currently Camp and Frausto, do not exercise any of the supervisory indicia required for such a determination. The housekeeping supervisors work shifts when Flores, the housekeeping manager, is on duty, such that they would not even be called upon to exercise any independent judgment. In addition, the Petitioner provides no evidence to show that these individuals perform any supervisory functions or even make effective recommendations in connection with supervisory indicia to justify such a finding. Accordingly, Camp and Frausto should be included in the unit of housekeeping and laundry employees found to be appropriate in the instant case.⁵

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

⁵ I find it unnecessary to make a determination as to the supervisory status of the wxyz supervisor and the aloha desk supervisor as the bar employees and aloha or front desk employees are not included in the directed unit.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before August 7, 2009. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **August 14, 2009**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 31st day of July, 2009.

/s/ Joseph A. Barker

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — Unit – Other Scope/Definition

Blue Book - 177-8580-7000; 177-8501-4000; 440-1760-7801;